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February 25, 2002

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Mr. Nicholas P. Godici  
Commissioner for Patents  
U.S. PATENT AND TRADEMARK OFFICE  
Crystal Park 2 - Room 910  
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Washington, D.C. 20231

VIA HAND DELIVERY

Re: U.S. Appln. Ser. No. 09/729,924  
Pub. No. US 2001/0012930 A1  
Lolachi et al/FRESENIUS AG  
Our Ref.: P66152US0

**RECEIVED**  
**FEB 28 2002**  
**TECHNOLOGY CENTER R3700**

Dear Mr. Godici:

We represent the Assignee, Fresenius AG, in the filing and prosecution of the captioned application. We feel it necessary to make you aware of a situation concerning this application which is an embarrassment to us and which we believe is also an embarrassment to the U.S. Patent and Trademark Office.

To briefly summarize the relevant facts, the captioned application was filed on December 6, 2000. On March 19, 2001, we filed a Declaration of the inventors in response to a Notice to File Missing Parts. This Declaration set forth an incorrect sequence for the inventors' names.

Subsequently we received the official Filing Receipt, updated version, dated May 3, 2001, indicating that the projected publication date of the application was to be August 9, 2001. Because of communications received from our client indicating the importance of correcting the sequence of the inventors' names, on June 1, 2001, we filed a Substitute Declaration to correct the sequence of the inventors' names for this application.

On July 24, 2001, we filed a letter confirming our telephone conversation with Examiner Thanh of Technology Center Art Unit 3763, and providing the Examiner with copies of the original Filing Receipt indicating that the anticipated publication date for this application was August 9, 2001, the Substitute Declaration, the transmittal letter, and PTO date-stamped receipt card indicating the filing on June 1, 2001 of the Substitute Declaration, and the Request for Filing Receipt Correction which was filed on July 23, 2001. We requested that the Examiner assist us in correcting the sequence of the inventors' names.

Mr. Nicholas P. Godici

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On August 9, 2001, the captioned application was published. However, the published application listed the sequence of inventors' names as submitted in the original Declaration, filed on March 19, 2001, rather than as listed in the Substitute Declaration, filed June 1, 2001.

Starting on August 20, 2001, we made repeated inquiries and conducted numerous telephone conferences with PTO personnel in an effort to republish the captioned application to correct the sequence of the inventors' names. As recommended by PTO personnel, we filed, on September 26, 2001, a Request for Pre-Grant Re-Publication, requesting correction of the sequence of the names of the inventors and publication of omitted Figure 7c (which was filed with the original application on December 6, 2000).

Since the filing of the Request for Pre-Grant Re-Publication we have had, at a minimum, four telephone conversations with Douglas Schwartz of the Office of Patent Publication. Mr. Schwartz has advised us that he is the person responsible at the PTO for pre-grant re-publication. Further, Mr. Schwartz has advised us that there are numerous other parties awaiting a decision with respect to their requests for pre-grant re-publication.

We have made repeated efforts to facilitate the pre-grant re-publication of our client's application, even offering to pay any fees or costs involved. However, our requests and offers have had no effect.

Over the past four months, we have been repeatedly advised that a policy decision needs to be made by the PTO before any pre-grant re-publication is to take place. All pending requests for pre-grant re-publication are being delayed.

We have conveyed this message to our client, the assignee of the captioned application. Our client has indicated, and we must agree, that they cannot understand why the PTO does not have a policy in place for pre-grant re-publication. We are aware that the publication of applications is a relatively new procedure to the PTO, but we must agree that the delay in deciding on a procedure for pre-grant re-publication, in the eyes of the outside world, is an embarrassment and a public pronouncement that the PTO cannot handle the responsibility with which they have been entrusted.

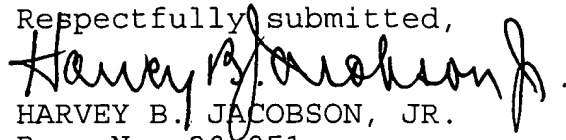
As a normal practice, we do not seek intervention from the Commissioner's Office. However, we believe this situation warrants your attention, and, perhaps, a directive to have a decision made regarding the numerous pending requests for pre-grant re-publication.

JACOBSON HOLMAN PLLC

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We, therefore, earnestly solicit your consideration and any efforts you can make on our client's behalf.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harvey B. Jacobson, Jr.", written over the typed name.

HARVEY B. JACOBSON, JR.  
Reg. No. 20,851

cc: Fresenius AG